Division Bench

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

M.P. NO. 504 OF 1990

Petitioner :- Shri S.R.Advani, S/o Shri Gurumukh das Advani, aged about 53 years, Assistant Engineer (Wrongfully dismissed), M.P. Housing Board Sub-Division, Pharasgaon, District Bastar R/o House No. A/30 M.P. Housing Colony, Raigarh .

V e r s u s

Respondents :-
1. M.P. Housing Board
2. The Chairman, M.P.Housing Board
3. The Inquiry Officer/Vigilence Officer, M.P. Housing Board

All the three at E/5 Arera Colony, Bhopal.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF SUITABLE WRIT/WRITS, ORDER/ ORDERS, DIRECTION/DIRECTIONS ETC., IN THE NATURE OF MANDAMUS , CERTIORARY ETC.

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Coram : **Hon'ble Shri H.L. Dattu, CJ &**
Hon'ble Shri V.K. Shrivastava, J

Writ Petition NO. 504 OF 1990

PETITIONER Shri S.R. Advani

Versus

RESPONDENTS M.P. Housing Board & Others.

Present :

Shri B.L. Dembra, counsel for the petitioner.
Shri Yashwant Tiwari and Shri Amiyakant Tiwari, counsel for the respondents.

ORAL ORDER

(Passed on 21st February, 2007)

The following oral order of the Court was passed by **H.L. Dattu, C.J.**

An officer, who was working in M.P. Housing Board ("Board" for short), is before us in this writ petition filed under Article 226/227 of the Constitution of India, inter alia, questioning the correctness or otherwise of the orders passed by the disciplinary authority dated 6-10-1987 and order passed by the first appellate authority dated 10-01-1990. The consequential relief sought, is to direct the respondents to reinstate the petitioner in to service with all consequential monetary and service benefits.

(2) The facts in brief are :

At the relevant point of time, the petitioner was working as an Assistant Engineer Housing Board, Sub Division, Raigarh.

(3) Tenders were invited by the Board for supply of steel by issuing an appropriate public notification dated 22-12-1981. M/s Jagannath & Sons had also participated in the tender process and they were awarded the contract by the Board vide its order dated 23-01-1982. Pursuant to the contract so awarded, it appears that M/s Jagannath & Sons had supplied steel to the Board, where the petitioner was working as an Assistant Engineer.

(4) On coming to know that there was shortage of supply of steel and the acceptance of the same by the petitioner, the disciplinary authority of the Board had issued a show cause notice to the petitioner, inter alia directing him to show cause why appropriate disciplinary proceedings should not be initiated against the petitioner. The petitioner had offered his explanation. Not being satisfied with the explanation so offered, the disciplinary authority of the Board had issued a charge memo, and in that it was alleged as under :

"Annexure –I

Statement of article of charges framed against Shri S.R. Advani, Asstt. Engineer, Raigarh

Shri S.R. Advani, Asstt. Engineer while working as Asstt. Engineer Housing Board Sub-Division Raigarh during the period from 20-02-1980 to 05-12-1985 committed the following irregularity and lapse. He is therefore, charged as below:-

Charge-I

Tender for the supply of 59.00 MT M.S. Round bars amounting to Rs. 2,65,000/- were invited on 22-12-1981 and the lowest offer of M/s Jagannath & Sons were accepted by the Dy. Housing Commissioner Raipur vide his No.547/GS/1-154/81 dt. 23-1-82.

> The steel was supplied and the payment was made to the supplier. But during physical verification it was found that 11.385 MT of steel was short supplied by the contractor. The value of the steel thus found short is Rs.50,094/- and this loss to the Board is attributed to the willful negligence and slackness on the part of Shri S.R. Advani, Astt. Engineer who has rendered himself liable for disciplinary action.
>
> Shri S.R. Advani, Asstt. Engineer is therefore charged for lack of devotion to duty and for not maintaining absolute integrity in violation of rule 3(1)(ii) of MP Civil Services (Conduct) Rules 1965 as adopted by the MP Housing Board."

(5) Along with the charge memo, the petitioner was supplied with the statement of imputation, the list of witnesses and also the documents on which the disciplinary authority intends to prove the allegations made against the petitioner in the charge memo. After receipt of the said charge memo, petitioner had filed his reply by his letter dated 18-01-1986, and additional reply dated 10-07-1987. In these two replies, the petitioner had denied the allegations made in the charge memo and further had offered his explanation. Not being satisfied with the explanation so offered by the petitioner, the disciplinary authority of the respondent Board had appointed an enquiry officer to inquire into the allegations made against the petitioner in the charge memo.

(6) Before the enquiry officer, the disciplinary authority had examined three witnesses and also had marked several documents in support of the allegations made in the charge memo. For the reasons best known, the delinquent officer had not examined himself nor examined any witnesses in support of his defence offered by him in his reply letter. After completion of the enquiry proceedings, the enquiry officer by way of clarification had asked several questions to the

petitioner and while replying those questions petitioner in fact had accepted the allegations made against him in the charge memo.

(7) After completion of the enquiry proceedings, the enquiry officer had submitted his enquiry report along with relevant documents to the disciplinary authority. In the enquiry report, the enquiry officer has come to the conclusion that the petitioner is guilty of the charges alleged in the charge memo.

(8) After receipt of the enquiry officer's report, the disciplinary authority after carefully scrutinizing the report of the enquiry officer, the statement of the witnesses before the enquiry officer and after perusal of the documents marked before the enquiry officer, had accepted the report of the enquiry officer and thereafter had imposed a major penalty of dismissal from service. Apart from this, it also had directed the petitioner to pay a sum of Rs.25,000/- towards the pecuniary loss suffered by the Board.

(9) Aggrieved by the said order passed by the disciplinary authority dated 06-10-1987, the petitioner had filed an appeal before the first appellate authority as provided under the Rules of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. In the memorandum of appeal so filed, the petitioner had only stated that he was not the only person responsible for acceptance of the short of supply of steel made by M/s Jagannath & Sons, and according to him, late Shri Datta who was working as an Executive Engineer and the Store Keeper, Raigarh were also responsible for acceptance of short supply of steel made by M/s Jagannath & Sons. Curiously petitioner had not taken up any other contentions in regard to the so called

procedural irregularities said to have been committed by the enquiry officer while conducting the enquiry proceedings.

(10) The appellate authority noticing the contention canvassed by the petitioner has come to the conclusion that the petitioner has not made out a case for his interference. Accordingly, by his order dated 10-01-1990 has rejected the appeal filed by the petitioner.

(11) The correctness or otherwise of these orders is the subject matter of this petition filed under Article 226/227 of the Constitution of India. Before we consider the contentions canvassed, we intend to remind ourselves the observations made by the Hon'ble Apex Court, in so far as judicial review of the orders passed by the disciplinary authority is concerned, in the case of **B.C. Chaturvedi Vs. Union of India & Others (1995) 6 SCC 749** the Apex Court has observed :

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power the authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation

> of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

(12) Learned counsel for the petitioner for the first time intends to contend before us the so called procedural irregularities and perverse findings recorded by the enquiry officer. On being asked by us whether he had taken up these contentions before the final fact finding authority, the learned counsel produced a copy of the Memorandum of Appeal. A bare perusal of which, it would appear that there is no whisper of any with regard to any procedural irregularity committed by the enquiry officer and disciplinary authority. To appreciate the contention of learned counsel for the petitioner, fresh investigation of facts requires to be done by this Court. This in our opinion is impermissible in a petition filed under Article 227 of the Constitution, since judicial review is not an appeal from the decision.

(13) As we have already stated, the petitioner when he filed the first appeal before the first appellate authority against the orders passed by the disciplinary authority had not taken up any contention with regard to so called procedural irregularities committed by the enquiry officer while holding the enquiry proceedings against him. The petitioner further had not taken up any contention before the first appellate authority in so far as the so called perversity of the findings of the enquiry officer in his report. Further, the petitioner had not taken up any contention with regard to the proportionality of punishment imposed by the disciplinary authority. Petitioner was primarily concentrating on the issue, that two

other persons were also responsible for accepting the short supply of steel made by the contractor namely M/s Jagannath & Sons. For the first time, before this Court the petitioner and his learned counsel intends to argue with regard to the perversity in the findings of the enquiry officer and the procedural irregularities said to have been committed by the enquiry officer and lastly to intend to comment on the orders passed by the disciplinary authority. In our view, the disciplinary authority in the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Therefore, since the petitioner had not urged and argued the aforesaid issues before the first appellate authority, for the first time, we cannot be permitting the learned counsel for the petitioner to urge those grounds before us in this petition. The law on the point is well settled by a catena of decisions rendered by the Hon'ble Apex Court. The Apex Court has observed that what was not urged before the first appellate authority or before the lower forum cannot be permitted to be argued and urged for the first time in a petition filed under Article 227 of the Constitution of India.

(14) The enquiry officer based on the evidence on record and also the statement made by the delinquent officer before him has come to the conclusion that petitioner is guilty of the charges alleged in the charge memo. The report of the enquiry officer is accepted by the disciplinary authority. The appellate authority has concurred with the findings of the disciplinary authority. Since we are not permitting the petitioner to urge any ground, which was not urged before the first

appellate authority, we do not intend to go into the details of the contentions canvassed by the petitioner in this writ petition at the time of hearing.

(15) In view of the above, we do not think that this is a fit case to interfere with the orders passed by either the first appellate authority or the disciplinary authority. Therefore, the petition requires to be rejected and accordingly it is rejected.

(16) In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

Sd/-
Chief Justice

Sd//-
V.K.Shrivastava
Judge